IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 920 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANHERLAL DAYASHANKER MEHTA - Petitioner(s)
Versus
GUJARAT RAJYA SAHAKARI KHAND UDYOG SANGH LTD. & 2 - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,MR NIMESH V DIXIT for Petitioner(s) : 1,MRS MH RAWAL for Petitioner(s) : 1,
MR KAUSHAL PANDYA for MR PRANAV G DESAI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/12/2006

ORAL JUDGMENT

1. Shri Hardic C. Raval, learned counsel for the petitioner, Shri Kaushal Pandya, leaned counsel

under the authority of Shri P.G. Desai.

2. Present petition arises out of a Lavad suit filed by the present petitioner.

3. The short facts necessary for disposal of the present writ application are that the petitioner was appointed on 1.3.82 as Manager cum Secretary of the respondent society. The appointment was made by the Board of Directors. The respondent, undisputedly is a cooperative society, it terminated the services of the petitioner vide order dated 11.1.85. The petitioner came to the High Court in Special Civil Application No. 154 of 1985 and challenged the order of termination. The respondent challenged the jurisdiction of the High Court on the ground that the cooperative society is not amenable to writ jurisdiction of the Court. The petition was ultimately dismissed on 10.4.85. Immediately thereafter, the petitioner filed Lavad Case No. 2008 of 1985 submitting inter alia that the impugned order dated 11.1.85 was illegal and contrary to the Act and the Rules. He also submitted that the change effected in the Byelaw

No. 17 was illegal and deserved to be set aside. The respondent no.1 gave an application to frame the following issue:

> “Whether under the provisions of Section 98 of the Cooperative Societies Act, the Court has jurisdiction to decide the subject matter of the suit?”

The application for framing preliminary issue was rejected and the order was confirmed by the Cooperative Tribunal, but in Special Civil Application No.3423 of 1988, the High Court directed the Court of Nominee to frame the issue. The issue was accordingly cast. The court of Nominee ultimately held that in view of the provisions of Section 96 of the Cooperative Societies Act, 1961, such suit was not maintainable, order was confirmed in appeal, therefore the petitioner is before this Court.

4. In the matter of the Gujarat State Cooperative Land Development Bank vs. P.R. Mankad, [AIR 1979 SC 1203], the Supreme Court has observed

that the suit between an employee and the cooperative society would not be maintainable. In view of the said authoritative pronouncement, this Court also must hold that the court of Nominee had no jurisdiction to entertain the suit of the present nature.

5. It was then contended that this Court should interfere in the matter and require the Court of Nominee to examine the correctness and validity of the action of the cooperative society in amending the byelaw. In the opinion of this Court, an employee in his capacity as employee would not be allowed to challenge the byelaw. Resolution no. 17 simply provided that the power to remove which earlier vested in the Board of Directors would, from the date of the resolution vest in the Chairman and the Managing Director would be entitled to communicate the order to such employee. It is submitted by Mr. Raval that before such resolution became the byelaw, order was made by the Chairman and under such circumstances, the order was bad. In the opinion of this Court, if on factual aspect, termination

is challenged, then, the question will have to be looked into by the court of competent jurisdiction. In any case, there is no illegality in the said resolution. The question raised by the petitioner only is that before the resolution became byelaw, could it be implemented.

6. I find no reason to interfere in the petition. The petition is dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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